THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 1070 of 2001
Old FA.F.O. No. 720 of 1983

Smt. Bhagirathi Devi, W/O Late Sri Bharat Singh Pal,
Resident of village Chhinka, Malla Nagpur,
District Chamoli
(Claimant)

… Appellant.

Versus

1. General Manager, U.P. State Road Transport Corporation, Lucknow.
2. Regional Manager, U.P. State Road Transport Corporation, Dehradun.
3. Divisional Manager, Oriental Fire & Insurance Company Limited, U.P. Hazratganj, Lucknow.

… Respondents.

Sri N.C.Gupta, Advocate, learned counsel for the appellant.
Sri A.N.Sharma, Advocate, learned counsel for respondent 1 & 2.
Sri T.A.Khan, Adv., for the respondent no.3.

Date April 24, 2006.

(Hon'ble B.S. Verma, J.)

This appeal has been preferred under Section 110-D of the Motor Vehicles Act 1939 ***(in short the Act)*** against the judgment and order dated 06-11-1981 passed by the Motor Accident Claims Tribunal/ Additional District Judge, Chamoli ***(in short the Tribunal)*** in Misc. Case No. 18 of 1979, Smt. Bhagirathi Devi Vs. General Manager, U.P.S.R.T.C. and others, whereby the claim petition was dismissed holding that the accident was not caused due to rash and negligent driving by the driver of bus No. UTF -3652 belonging to the O.P. –respondents, and the motor accident was result of slippery road in the rainy season.

Relevant facts giving rise to the present appeal are that claimant-appellant filed a claim petition for compensation of Rs. 1,60,682-86 against the O.P. –respondents in respect of death of her husband Bharat Singh Pal, who died as a result of injuries suffered by him involving bus No. UTF-3652 belonging to the respondents.

It is alleged that the deceased boarded the bus at Chhinka for going to Gauchar on 10-7-1977. The bus was being driven rashly and negligently by its driver with the result it fell in a ravine at Dewalibagarh and a number of passengers died and several suffered grievous injuries including Bharat Singh Pal, who ultimately succumbed to his injuries in the course of his treatment in the All India Institute of Medical Sciences New Delhi on 25.12.1978. The deceased was aged 35 years and was earning Rs. 500/- per month as a Radio Mechanic. Compensation was claimed on different counts with a total of Rs. 1,60,682-86.

The O.P.Nos. 1 and 2 contested the claim petition and alleged in their written statement that the driver of the bus was not negligent and the bus was going at normal speed. When the bus reached the spot, the driver in order to avoid a ditch on the left hill side turned the bus towards right but unfortunately the Katcha wall on the right side gave way and the front wheel of the bus went out the road, but he could not control the vehicle which fell into the ravine thereby causing injuries to the passengers including the deceased. According to them, the road was slippery and as the ***kuccha*** portion of the wall gave way, the accident occurred.

On the pleadings of the parties, the learned Tribunal framed following issues:-

1. Whether Govind Singh deceased was driving bus no. U.T.F. 3652 of the defendant no.1 rashly and negligenty or the accident was the result of slippery road in the rainy season and the breaking of the Katcha road on the Khad side? Its effect?
2. Whether Bharat Singh Pal injured on 10-7-77 died as a result of his injuries or otherwise in December 1978? Its effect?
3. Whether plaintiff is entitled to recover any amount by way of damages? If so, what and from which of the two defendants.

After recording the evidence adduced by the parties and perusing the same, the learned Tribunal took up Issue No. 1 for decision. The claimant in order to prove that the accident was caused due to negligence on the part of the driver has produced eye witness Gabar Singh as P.W.3. This witness has stated that on 10-7-77, he was going to Srinagar by the said bus. When the bus reached at Chhinka, deceased Bharat Singh Pal also boarded on this bus. The driver was driving the vehicle at high speed and therefore, the bus rolled into the Khad at Dewaligarh on the right side with the result he and deceased Bharat Singh Pal sustained injuries and they were admitted in the hospital. This witness has remained unshaken in his cross-examination. He has deposed that there was no rains for the last 2-3 days and the road was dry. There was no ditch on the road. He has specifically denied that the driver was driving the bus properly. It was also denied that the road was slippery. This witness has further stated that at the spot there was a curve and ***pucca*** road was 15 ft in width. There was no defect in the vehicle. He has also stated that the bus was being at some high speed that its normal speed. On the other hand, the O.Ps. have examined D.W.1 Lalita Prasad, the conductor of the bus. In his testimony, he has stated that it is wrong to say that the driver was driving the bus at high speed. This witness was cross-examined by defendant nos. 1 and 2. He has not been cross-examined on behalf of the claimant. It does not stand to reason as to why the cross-examination of this witness was done on behalf of the O.Ps., who themselves has produced D.W.1 Lalita Prasad and who has not turned hostile to the O.Ps. who produced him in the witness box. The record of the deposition does not disclose that any opportunity was given to the claimant to cross-examine the driver of the bus D.W.1 on the point of negligence on the part of the driver.

The learned Tribunal has only placed reliance on the sole testimony of D.W.1 Lalita Prasad, who being an employee of the opposite parties was naturally interested in saving the skin of the opposite parties from the liability of compensation. It was held by

the learned Tribunal that the claimant has failed to prove the negligence on the part of the driver.

On Issue No.2, the learned Tribunal has come to the conclusion that the deceased Bharat Singh Pal died due to the injuries suffered by him in the motor accident. On Issue No. 3, after dealing with the evidence led by the claimant, the learned Tribunal has concluded that had the claimant proved negligence on the part of driver, she was entitled to get compensation of Rs. 21,432-86 P. from the O.P. –respondent nos. 1 and 2. Ultimately finding that the accident was not caused due to fault on the part of the driver, the petition for compensation was dismissed. Aggrieved the claimant has come up before this Court.

In this appeal, the impugned order of the Tribunal has been assailed only on the point that the claimant has proved on record that the motor accident was caused due to sole rashness and negligence on the part of the driver of the vehicle.

I have heard learned counsel for the parties and have examined the evidence placed on record including the impugned order.

In the course of argument, the appeal has been pressed against the finding on Issue No.1 recorded by the learned Tribunal. The claimant-appellant has conceded to the finding regarding quantum of damages fixed by the Tribunal.

At the outset, it may be mentioned that there is no finding of the Tribunal as against the respondent no.3. Moreover, the claimant Bhagirathi Devi had given her statement under Order 10, Rule 2 CPC that the bus no. UTF-3652 was not insured with the Insurance Company-respondent no.3. The case has to be decided only between the claimant-appellant and the respondent nos. 1 and 2.

As detailed above, the claimant in order to prove negligence on the part of the driver of the ill-fated bus has examined P.W.3, who was traveling by the said vehicle at the time of accident. This witness has given ocular account of the accident. He has clearly stated that the driver was driving the vehicle at high speed. He was cross-examined on behalf of the O.P.Nos. 1 and 2. He has denied the suggestion that there was rain during the past 2-3 days and he clearly stated that the road was dry. He has denied the presence of ditch on the spot, rather he has stated that the road was 15 ft. broad at the relevant place of accident. In the cross-examination also, this witness stated that the speed of the bus was high than the normal speed. This evidence of P.W.3 Gabar Singh is sufficient to make out a case in favour of the claimant that the driver of the bus was driving the vehicle at high speed. Admittedly, the bus was being driven on the hill roads of Uttaranchal in the year 1977. It is the moral duty of the driver of the hill roads to be vigilant while driving the vehicles before crossing the curves. The contention of the O.P.Nos. 1 and 2 that the road was slippery and wet due to rains is not acceptable in view of the specific statement of the P.W.3 Gabar Singh, who stated that there was no rains during the past 2-3. It has not been shown or suggested that P.W.3 Gabar Singh was in any way interested to give false statement against the driver.

So far as the testimony of D.W.1 conductor of the bus is concerned, a complete reading of the deposition of D.W.1 goes to show that no where he has stated in affirmative that the driver of the bus was driving the vehicle at normal speed and he was careful and cautious while driving the bus. The O.P.Nos. 1 and 2 in their written statement had taken a positive stand that there was a ditch on the left side of the road, when the accident took place, but it is surprising that they could not prepare or file any site plan of the place of accident to substantiate their contention. D.W.1 in his cross-examination has admitted that at the time of accident, there was no rains. From the side of the claimant, Copy of report of Case Crime No. 18, under Sections 279/304 IPC, G.D. No. 17, dated 10-7-1977

(paper no. 78-C/1-2) was filed. In this report, at page 3, it has been mentioned by the Sub Inspector of Police that on inspection of the spot and investigation, it was bound that the bus was driven at high speed and negligently by the driver Govind Singh, thereby the bus fell in the ***Khud*** and therefore, the case was registered under Section 279/304 IPC at Crime No.18 of P.S. Karnprayag. From the side of the claimant, site plan of the place of accident prepared by the police was filed as paper no. 100-C. The genuineness of this document is admitted to the O.P.No. 1 and an endorsement to that effect was recorded by the counsel for the O.P.No.1 on the reverse side of the document. In this site plan, no ditch had been pointed out on the road towards left side by the investigation officer though all other details are there. The position of the road appears to be ***pucca.*** it appears that the learned Tribunal lost sight of these documents, which were sufficient to make out a prima facie case that the accident had taken place in the manner as alleged by the claimant. Under the provisions of the Motor Vehicles Act, strict proof of the fact is not required to prove the negligence.

Having considered all the facts and circumstances coupled with the ocular testimony of P.W.3 Gabar Singh on record and having considered the documents placed on record, I am of the view that the accident in question was caused due to rash and negligent driving by the driver of the ill-fated bus. Accordingly the Issue No.1 is decided in the manner that the accident in question was caused due to rash and negligent driving by the driver of the bus and not account of the road being slippery or otherwise. The finding recorded by the Tribunal on Issued No. 1 is set aside.

As observed earlier, the finding of the Tribunal regarding quantum of compensation of Rs.21.432-86 has not been assailed, therefore, I hold that the claimant-appellant is entitled to this amount as compensation.

Accordingly, the respondent nos. 1 and 2 are liable to pay compensation of Rs. 21,432-86 P. to the claimant-appellant. The O.P.Nos. 1 and 2- respondent nos. 1 and 2 shall also pay simple interest on the compensation amount form the date of claim petition 26-4-79 till the date of payment.

In view of the discussion aforesaid, the appeal deserves to be allowed. The finding of the leaned Tribunal is reversed on Issue No.1 as mentioned above.

The appeal is allowed. The claimant-appellant shall be entitled to get compensation of Rs. 21,432-86 along with simple interest @ Rs. 7,1/2% per annum from 26-4-1979 till the date of payment. The compensation along with interest shall be payable by the O.P. –respondent no. 1 and 2, the owner of the vehicle. No order as to costs.

(B.S.Verma, J.)

RCP